

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CLIFFORD SCHUETT,

Case No. 2:20-cv-00169-RFB-DJA

Plaintiff

ORDER

v.

MONTEZ et al.,

Defendants

This action began with a *pro se* civil rights complaint filed under *Bivens*¹ by a former federal inmate. On December 23, 2020, this Court issued an order directing Plaintiff to file his updated address with this Court within 30 days. (ECF No. 5 at 1). The 30-day period has now expired, and Plaintiff has not filed his updated address or otherwise responded to the Court's order.

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (affirming dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (affirming dismissal for lack of prosecution and failure to comply with local rules).

In determining whether to dismiss an action for lack of prosecution, failure to obey a court order, or failure to comply with local rules, the court must consider several factors:

¹ *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).

1 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
2 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
3 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
4 See *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at
5 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

6 Here, the Court finds that the first two factors, the public's interest in expeditiously
7 resolving this litigation and the Court's interest in managing the docket, weigh in favor of
8 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of
9 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay
10 in filing a pleading ordered by the court or prosecuting an action. See *Anderson v. Air*
11 *West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy favoring
12 disposition of cases on their merits—is greatly outweighed by the factors in favor of
13 dismissal discussed herein. Finally, a court's warning to a party that his failure to obey
14 the court's order will result in dismissal satisfies the "consideration of alternatives"
15 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779
16 F.2d at 1424. The Court's order requiring Plaintiff to file his updated address with the
17 Court within 30 days expressly stated: "IT IS FURTHER ORDERED that, if Plaintiff fails
18 to timely comply with this order, this case will be subject to dismissal without prejudice."
19 (ECF No. 5 at 1). Thus, Plaintiff had adequate warning that dismissal would result from
20 his noncompliance with the Court's order to file his updated address within 30 days.

21 It is therefore ordered that this action is dismissed without prejudice based on
22 Plaintiff's failure to file an updated address in compliance with this Court's December 23,
23 2020, order.

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1 It is further ordered that the application to proceed *in forma pauperis* (ECF No. 1)
2 is denied as moot.

3 It is further ordered that the Clerk of Court will close the case and enter judgment
4 accordingly.

5 DATED THIS 29th day of January 2021.

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8 RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE
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